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SUPPLEMENTAL APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1968

No. 73

ROBERT NEWTON GARDNER, JR.,
Petitioner,

—v.—

CALIFORNIA,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO

PETITION FOR CERTIORARI FILED JUNE 3, 1967
CERTIORARI GRANTED MAY 6, 1968

Supreme Court of the United States

OCTOBER TERM, 1968

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INDEX

	Page
Register of Criminal Actions, Superior Court, San Luis Obispo County, California, Action No. 5101	1
Order to show cause re petition for writ of habeas corpus and order for production of prisoner filed October 18, 1966	5
Petition for writ of habeas corpus dated October 30, 1966 and filed November 16, 1966	7
Order to show cause re petition for writ of habeas corpus and order for production of prisoner filed December 6, 1966	44

REGISTER OF CRIMINAL ACTIONS, SUPERIOR COURT, SAN LUIS OBISPO COUNTY, CALIFORNIA

No. of Action 5101

In the Matter of the Application of
ROBERT NEWTON GARDNER, JR.
for a Writ of Habeas Corpus

Nature of Offense: Petition for Writ of Habeas Corpus

James W. Powell
Public Defender (Appt. 12-6-66)

1966

Sept.	23	Petition for Writ of Mandate or Injunction filed. Delivered to office of Judge Harris.
Sept.	27	Memorandum filed. Copy mailed to the Petitioner.
Oct.	6	Document Entitled "Motion to Vacate Order Denying Filing of Petition". Received. Delivered to the Office of Judge Harris.
Oct.	7	Order. Filed. Copy mailed to Petitioner. (Harris)
Oct.	13	Order to Show Cause Re: Petition for Writ of Habeas Corpus and Order for Production of Prisoner. Filed (Harris)
Oct.	13	Return to Order to Show Cause. Filed.
Oct.	17	Petitioner Advised of rights. Judge Richard F. Harris disqualifies himself. Hearing ordered transferred to Dept. II (Harris)
Oct.	17	Hearing continued to Tuesday, Dec. 20, 1966—Dept II, 9:30 a.m. (OR)

1966

Oct. 21 Order for Production of Patient. Filed.

Nov. 16 Petition for Writ of Habeas Corpus. filed. Sent to Judge O'Reilly

Dec. 6 Order to Show Cause re Petition for Writ of Habeas Corpus & Order for Production of Patient. filed.

Dec. 6 Motion & Affidavit for Appointment of Counsel. filed.

Dec. 6 Public Defender appointed as counsel for Petitioner. (O'R)

Dec. 8 Return to Order to Show Cause. filed.

Dec. 14 Subpoena issued for Peo.

Dec. 14 Hearing on Petition for Writ of Habeas Corpus now set for Tues. Dec. 20, 1966 is ordered continued to Thurs., Dec. 22, 1966. (O'R)

Dec. 22 Petition for Writ of Mandamus or Injunction. filed.

Dec. 22 Hearing is continued on Motion of Wendt, to Wednesday, Feb. 1-67, 9:30 a.m., Dept. I. Ruling on Restraining Order withheld at this time. Court directs order in open Court to Mr. Fryer of Men's Colony to the effect that no alterations or changes of the records of defendant shall be made. The Court further orders the Sgt in charge of legal documents and materials shall provide these documents to defendant within the limitations of the distribution of these things. Remanded to Deputies from C.M.C. (O'R)

1967

Feb. 1 Trial commenced and concluded and ordered to stand submitted (O'R)

Feb. 15 In the Matter heretofore submitted, the Court now rules in accordance with Memorandum of Decision on file (O'R)

1967

Mar. 1 Notice of Motion under Informa Pauperis Provision for Free Transcript of all Proceedings had hereof. Filed.

Mar. 1 Order Denying Motion. Filed. Certified copy sent to Petitioner. 1 copy to Dist. Atty. 1 copy to H.V. Field, Supt. CMC.

Mar. 14 Copy of Petition for Writ of Certiorari received for transmittal to Judge T.I. O'Reilly.

Apr. 20 Copy of Petition for Hearing, Supreme Court of the State of Calif. Received.

Apr. 21 Petition for Writ of Habeas Corpus. Filed.

Apr. 21 Memorandum Denying Writ of Habeas Corpus. Filed. Certified copy sent to Petitioner. One copy to Dist. Atty. One copy to H.V. Field, CMC (Harris)

June 5 Copy of "Petition for Writ of Certiorari, in Forma Pauperis", to U.S. Supreme Court. Received.

July 5 Petition for Writ of Habeas Corpus. Filed.

July 5 Order Denying Writ. Filed. Certified copy to Petitioner. One copy to Dist. Atty. One copy to H.V. Field, Supt. CMC (Harris)

July 18 Motion to Vacate Order and for Leave to Amend Petition. Filed.

July 18 Order Denying Motion. Filed. Certified copy to Petitioner. One copy to Dist. Atty. One copy to H.V. Field, Supt. CMC (Harris)

1968

Feb. 16 Copy of Order of Court of Appeal, First Appellate District, denying Petition for Writ of Mandate is received.

May 10 Certified copy of Order of Supreme Court of United States granting Petition for Writ of Certiorari. filed.

1968

June 13 Proceedings of December 22, 1966. filed.

June 13 Proceedings upon Hearing of February 1, 1967. filed.

July 11 Petition for Writ of Habeas Corpus. filed (Petition sent to Office of the Atty Gen for response 7-11-68)

Aug. 12 Response to Petition for Writ of Habeas Corpus, w/clerk's transcript, Reporter's transcript on Appeal; Volume I-pages 1 to 237 & Reporter's Transcript on Appeal; Volume II-Pages 238 to 418. filed.

Aug. 12 Copy of Petitioner's Brief in the Supreme Court of the United States. Received.

Aug. 26 Proceedings of October 17, 1966. filed.

Aug. 30 Petitioner's Traverse to Attorney General's Response. Filed.

Aug. 30 Order Denying Petition. Filed. Certified copy to Petitioner. Certified copy to Jack Weber, Deputy Atty General. One copy to Dist Atty. Certified copy to C.J. Fitzharris, Supt. (CTF at Soledad) (Harris)

JAMES W. POWELL
District Attorney
San Luis Obispo County
Courthouse Annex
San Luis Obispo, California
Telephone: 543-1550

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

No. 5101

Endorsed, Filed, Oct. 13, 1966, A. E. Mallagh, County Clerk, By Josephine Carrazanh, Deputy Clerk.

In the Matter of the Application of
ROBERT NEWTON GARDNER, JR.
for a Writ of Habeas Corpus

ORDER TO SHOW CAUSE RE PETITION FOR WRIT OF HABEAS CORPUS AND ORDER FOR PRODUCTION OF PRISONER

TO: H. V. FIELD, Superintendent, California Men's Colony, Los Padres, California

YOU ARE HEREBY ORDERED TO APPEAR before the above-entitled Court, in Department 1 thereof, in the Courthouse Annex in the City of San Luis Obispo, California, at the hour of 2:00 P.M. on the 17th day of October, 1966, then and there to show legal cause, if any you have, why the petition of ROBERT NEWTON GARDNER, JR. for issuance of a Writ of Habeas Corpus should not be granted.

IT IS FURTHER ORDERED that you produce at such hearing all records in your custody or under your control that pertain to said Petitioner's commitment to the Department of Corrections of the State of California and/or the California Men's Colony, Los Padres, California.

IT IS FURTHER ORDERED that you produce said Petitioner on said date at the aforesaid time and place to act as a witness in connection with his application for a Writ of Habeas Corpus.

YOU ARE FURTHER COMMANDED to deliver said Petitioner into the custody of the Bailiff of this Court, Department 1 thereof, on the 17th day of October 1966, at the hour of 2:00 P.M., and any further proceedings.

Dated this 13th day of October, 1966.

/s/ Richard F. Harris
Judge of the Superior Court

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

(Court)

No. 5101

(To be supplied by Clerk of the Court)

Endorsed, Filed, Nov. 16, 1966, A. E. Mallagh, County Clerk, By [Illegible], Deputy Clerk.

ROBERT NEWTON GARDNER, JR.

(Petitioner)

vs.

H. V. FIELD, Superintendent California Mens Colony, Los Padres, California

(Respondent)

Petition for Writ of HABEAS CORPUS

(Title of writ)

Name of person in custody:

_____

(If other than petitioner)

Relationship of petitioner to person in custody:

_____

INSTRUCTIONS—READ CAREFULLY

Set forth in concise form the answers to each applicable question. If you do not know the answer to any question, you should so state. If necessary, you may finish the answer to a particular question on an additional blank page,

---

Approved by the Judicial Council of California for use under Rules 56.5 and 201 (f) of the California Rules of Court [as adopted effective Jan. 1, 1966].

but make it clear to which question any such continued answer refers.

You should exercise care to assure that all answers are true and correct. Since the petition contains a verification, the making of a statement which you know is false may result in a conviction for perjury.

When the petition is filed with the Superior Court or judge thereof, only the original must be filed unless additional copies are required by local court rules.

When the petition is filed with the District Court of Appeal or justice thereof, an original and three copies must be filed.

When the petitioff is filed with the Supreme Court or justice thereof, an original and ten copies must be filed.

In addition, the law requires the service of a copy of the petition on the district attorney, city attorney or city prosecutor in certain cases (Pen. Code § 1475, Gov. Code § 72193).

Petitioner should attach all relevant records or documents supporting his claims.

1. ROBERT NEWTON GARDNER, JR., A-28381 in
(Name of person in custody)

whose behalf the writ is applied for is confined or restrained of his liberty at CALIFORNIA MENS
(Place of detention)

COLONY-EAST by H. V. FIELD, Superintendent,
(Name of person or persons having custody—if names not known describe such person or persons)

Los Padres, California 93401 _____

_____

2. Name and location of court under whose process person is confined:

Superior Court, County of Orange, Santa Ana, California _____

_____

_____

3. Nature of the court proceeding (e.g., criminal case, commitment for narcotics addiction, insanity, or mentally disordered or abnormal sex offender) and the case number, if known, resulting in the confinement: Criminal Case C-10451, commitment for violation 11500 Health & Safety Code, possession of narcotics. 6 months to 10 years, 1st time narcotics with Parole Violation on 1954 Robbery Term. (second termer overall) _____

4. The date of the judgment, order or decree for confinement and its terms: February, 1960, sentenced to state prison for six months to ten years. That sentence runs concurrently with the Parole violation.

_____

5. What plea was entered in the above proceeding? (E.g., guilty, not guilty, not guilty by reason of insanity, nolo contendere, etc.)

plea of guilty. _____

_____

6. Check whether trial or hearing was by

(a) ☐ A jury
(b) ☒ A judge without a jury

7. Was an appeal taken? No. At that time (1960) no appeal would lie from a plea of guilty.

8. If you answered "yes" to (7), list

(a) The name of each court to which an appeal was taken:

i _____
ii _____
iii _____

(b) The result in each such court:

i _____
ii _____
iii _____

(c) The date of each such result and, if known, citations of any written opinions or orders entered:

i _____

ii _____

iii _____

9. If the answer to (7) was "no" state the reasons for not so appealing:

No appeal would lie from a plea of guilty at that time. _____

_____

10. State concisely the grounds on which you base your allegation that the imprisonment or detention is illegal:

(a) See pages 1 and two of Supplement to this form. (annexed hereto) _____

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) See Supplement to Writ Form, pages 3 on. ____

(b) _____

(c) _____

12. Have any other applications, petitions or motions been filed or made in regard to the same detention or restraint? Yes _____

13. If you answered "yes" to (12), list with respect to each petition, motion or application:

(a) The specific nature thereof:

i Petition For Writ of Coram Nobis, C-10451, Trial Court _____

ii Petition for Writ of Habeas Corpus as to C.S. sentence _____

iii Petition for writ of Habeas Corpus, No. 4319, Solano Co. relating to roadblocking and interference of legal mail and the like by prison officials _____

iv _____

(b) The name and location of the court in which each was filed:

i Superior Court, Orange County, Santa Ana, California

ii Solano County Superior Court, Fairfield, California

iii Solano County Superior Court, Fairfield, California

iv

(c) The disposition thereof:

i Denied. See Supplement as to additional information

ii Granted. Sentence ordered to run concurrently

iii Denied as respondents allegedly ceased interference

iv

(d) The date of each such disposition:

i May 16, 1964, DCA Oct. 20, 1965, 384 US —— Cert. Denied June 20, 1966

ii November 1963

iii November 1963

iv

(e) If known, citations of any written opinions or orders entered pursuant to each such disposition:

i GARDNER v. CALIFORNIA, Misc. 1636, Oct. Term 1965, 384 US ——

ii Unreported

iii unreported

iv

14. Has any ground set forth in (10) been previously presented to this or any other court, state or federal, in any petition, motion or application? No, except for small part presented in 13, iii

15. If you answered "yes" to (14), identify:

(a) Which grounds have been previously presented:

i interference with legal mail and access to the courts as shown in answer to question 13, iii

ii _____

iii _____

(b) The proceedings in which each ground was raised:

i _____

ii _____

iii _____

16. If any ground set forth in (10) has not previously been presented to any court, state or federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) The situation in the instant case is unusual in that the Petitioner is not claiming deprivation of any constitutional right during trial or up to an including judgment of conviction _____

(b) Petitioner contends that acts, ommissions, and denial of constitutional rights which have taken place after judgment, has caused him to be entitled to discharge from custody. Jurisdiction is based on Penal Code, section 1485, Part 2 _____

(c) The cause of action did not arise until recently _____

17. In the proceeding resulting in the confinement complained of, was there representation by an attorney at any time during the course of:

(a) The proceedings prior to trial? Yes _____

(b) The trial or hearing? Yes _____

(c) The sentencing or commitment? Yes _____

(d) An appeal? No appeal _____

(e) The preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction? No, except on appeal of coram nobis in trial court _____

18. If you answered "yes" to one or more parts of (17), list the name and address of each such attorney and the proceeding in which he appeared:

(a) Robert W. Armstrong, Pacific Blvd., Huntington Park, Calif. Proceedings prior to trial, trial, sentencing _____

(b) Gareld J. Orman, Deputy Public Defender, Orange County, Santa Ana, California. Coram nobis—on appeal to DCA _____

_____

(c) _____

_____

19. Is the person in custody presently represented by an attorney in any matter relating to this confinement? No _____

If so, state the attorney's name and address: _____

_____

20. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

This is first court of proper jurisdiction _____

_____

_____

I, the undersigned, say:

I am the petitioner in this action; the above document is true of my own knowledge, except as to matters that are stated in it on my information and belief, and as to those matters I believe it to be true.

Executed on October 30, 1966 at Los Padres, California.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Robert Newton Gardner, Jr.
ROBERT NEWTON GARDNER, JR.
A-28381

ROBERT NEWTON GARDNER, JR.
A-28381
California Mens Colony-East
Los Padres, California 93401

Petitioner in prioria persona

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

Case No. 5101

ROBERT NEWTON GARDNER, JR., PETITIONER

- *vs.* -

H. V. FIELD, Superintendent, California Mens Colony-East Facility, Los Padres, California, RESPONDENT

SUPPLEMENT

SUPPLEMENT TO PETITION FOR WRIT OF HABEAS CORPUS WRIT FORM UNDER RULES 56.5 AND 201 (f)

Answers pertaining to question number 10.

ALLEGATIONS

I

Petitioner alleges that the wilful or negligent failure of the Superior Court Clerk to provide this indigent petitioner with a copy of his trial transcript, when ordered to do so by a Court, deprived him of due process and equal protection of the law as secured by the Fourteenth Amendment to the United States Constitution.

II

Petitioner alleges that the failure of the State of California through its agents to afford petitioner his transcript, when ordered to do so by a Court, severely preju-

diced his cause and denied him a timely, meaningful and proper coram nobis hearing and caused the appeal therefrom to be inadequate and meaningless, which resulted in irreparable damage to his cause, and as such, violated petitioner's rights to due process and equal protection as secured by the Fourteenth Amendment.

III

Petitioner alleges that the State of California, through its prison officials, has denied petitioner adequate access to legal materials, law books, post-conviction review, appellate review, and the right to have meaningful hearings in the Courts. The aforesaid due to the fact that the prison officials have arbitrarily confiscated or destroyed legal documents, notes, records, partially prepared habeas corpus petitions with annexed exhibits, and have denied petitioner timely and reasonable access to the mails and the courts, and as such, have caused petitioner to be deprived of his liberty in violation of the equal protection clause of the Fourteenth Amendment. Moreover, the State of California through its prison officials have denied petitioner the equal right afforded to all persons convicted of crime in California to meaningfully prosecute a petition for writ of coram nobis, other post-conviction remedies, and appeals therefrom.

IV

Petitioner alleges as a result of Allegations I, II, and III, as above set forth, he has been subjected to long delays and forced into prolonged litigation, which have severally prejudiced his chances of parole with the Adult Authority and caused him to serve an excessive term of imprisonment, as punishment, more onerous than the law allows solely because petitioner has exercised or attempted to exercise his Federal Civil and Constitutional Rights.

V

Petitioner alleges that the proximate result of the aforesaid deprivations has caused the petitioner to be subjected to cruel and unusual punishment, and has denied him

due process and equal protection, privileges, and immunities, in violation of the Eight and Fourteenth Amendments, and as a result thereof has deprived petitioner of substantive rights under the laws and Constitutions of the State of California and the United States of America, and as such, entitles him to discharge from custody upon petition for writ of habeas corpus.

Answers pertaining to question number 11.

STATEMENT OF FACTS

I

The State of California and the Respondent herein have access to and custody and control of the complete file and record of the Petitioner, PEOPLE v. ROBERT N. GARDNER, JR., Cr. No. C-10451, In the Superior Court of the State of California, In and for the County of Orange. That file and record will show the following: (See Exhibits, Groups III, IV, to be submitted.)

That on December 10, 1959, the petitioner was arrested and incarcerated in the Santa Ana County Jail, Orange County, California. Several proceedings were had in the matter during the months of January and February of 1960. The petitioner was tried, convicted and sentenced to state prison during that period for violation of 11500 Health and Safety Code, possession of narcotics, with no prior narcotics conviction. Petitioner was continuously physically incarcerated either in jail or state prison from December 10, 1959, to the date of the filing of the present petition for writ of habeas corpus.

On March 9, 1960, the petitioner mailed an informal notice of appeal to the trial court. However, the County Clerk alleges that the notice was not received or not filed. (See Clerk's Transcript on Appeal, page 230, lines 20 to 23; Appellant's Opening Brief on Appeal, page 3, lines 20 to 22.)

On July 18, 1960, petitioner filed in the trial court his Motion for the procurement of the record without prepayment of any fees. On July 22, 1960, the Honorable R. M. Crookshank, Department 5, Superior Court, County

of Orange, granted the petitioner's motion for portions of the record to allow petitioner his right as an indigent to prepare and present a meaningful collateral attack on the judgment by avenue of coram nobis or habeas corpus based on the ground and reasons spelled out in that motion. The inference of petitioner's need of transcripts must be drawn from the issuance of court orders compelling the Clerk to prepare and produce the said transcripts for the indigent petitioner. Throughout the hearing of July 18, 1960, wherein the motion as aforesaid was granted, the State of California was duly represented by their agents, Deputy District Attorney DEWITTE CHATTERTON (hereinafter CHATTERTON) and Deputy Superior Court Clerk ROBERT K. HENSON (hereinafter HENSON). (See Order Granting Motion, Entered August 4, 1960; Register of Actions in C-10451; Clerk's Transcript on Appeal, page 230, lines 23 to page 231, line 3; Appellant's Opening Brief on Appeal, page 3, Ll 22 to 25.) (Also See Group III, No. 1, 2, 3.)

The above mentioned Court Order Granting Petitioner's motion for transcripts as an indigent and compelling Superior Court Clerk HENSON to prepare and present same to petitioner was entered August 4, 1960. The Superior Court Clerk did not notify the petitioner that said motion was granted, nor did he prepare said transcripts as ordered by the Court. The petitioner did not receive the transcripts, nor any communication whatever from the Clerk regarding the above matter from the date of that hearing, July 18, 1960, to the date of the filing of the instant petition for writ of habeas corpus, notwithstanding the numerous letters of inquiry addressed to the Clerk from petitioner regarding his case. (See File of County Clerk in C-10451; Reporter's Transcript on Appeal, Friday Oct. 23, 1964, page 40, lines 4 to 13; Clerk's Transcript on Appeal, pages 230, lines 23 to page 231, line 10; Appellant's Opening Brief, pages 3, lines 22 to page 4, line 6; Register of Actions in C-10451; Carbon copies of petitioner's letters; Also see petitioner's Prison Mail Record Card.) (See Exhibits, Group III, Numbers 1, 2, and 3.)

On July 2, 1963, petitioner renewed his Motion for the procurement of the record as an indigent. The judge denied that motion stating, "the court considered the written motion as well as all previous proceedings in this matter." The previous proceedings would show the earlier granting of the same motion, entered August 4, 1960, which was still unknown to petitioner. (See Order of the Court entered August 4, 1960, in Book 113, page 603; Order of the Court entered July 5 1963 in Book 181, page 600.) (See Exhibits, Group III, Numbers 1, 2 and 3.)

On July 10, 1963, petitioner received an Order of the Court denying his motion of July 2, 1963. Within four (4) hours of receiving that Order the petitioner mailed a notice of appeal to the Superior Court Clerk. The Clerk notified the petitioner that the notice of appeal was received too late and not filed. (See Order of the Court entered July 5, 1963, Book 181, page 600; Clerk's Transcript on Appeal, page 231; Appellant's Opening Brief, page 3 and 4; Copy of Notice of Appeal; Clerk's letters to petitioner.)

On March 12, 1964, petitioner first became aware of the motion for the records having been granted previously by the Court on July 22, 1960. In March 1964, petitioner first purchased a certified copy of the Court's Register of Actions, which set forth the granting of the above mentioned motion, and petitioner subsequently purchased copies of the earlier Order granting petitioner's necessary and needed transcripts. (See Carbon copies of letters of Petitioner to Court Clerk; Letters from County Clerk; Dates of Certification of petitioner's copy of Register of Actions, dated March 12, 1964 and Order Granting Motion, dated as a certified copy on April 10, 1964; County Clerk's Book 113, page 603.)

II

Petitioner incorporates page 3, line 16 to page 6, line 9, inclusive, of the Supplement herein by reference thereto as fully set forth in this portion of the Statement of Facts.

By May, 1964, petitioner was able to procure meager records through the aid of relatives, to enable him to attempt to present his petition for writ of coram nobis to the trial court. An appeal from the judgment did not lie at that time as petitioner had entered a plea of guilty and a petition for writ of coram nobis was the proper avenue to seek relief, and held as such by the District Court of Appeal. That petition for writ of coram nobis was presented to the trial court in propria persona and as an indigent on May 16, 1964. On October 29, 1964, after an *in absentia* hearing, that petition was denied without opinion, finding of fact, or conclusions of law. (Appellant's Opening Brief, page 1, lines 14 to 19.)

On October 14, 1965, in appellate case 4/Crim. 2153, during oral argument of counsel before the District Court of Appeal in San Bernardino, California, the Public Defender, representing petitioner, while presenting the merits of petitioner's cause and the remedies pursued by petitioner, was interrupted by Justice Coughlin, who stated, "except he didn't do it for four years." (People v. Gardner, 4/Crim. 2153. Arguments before the Fourth District Court of Appeal on October 14, 1965, Court Reporter's Transcript, page 2, line 23.)

On October 20, 1965, the District Court of Appeal affirmed the lower court's denial of petitioner's petition for writ of coram nobis. In that Opinion the Court stated as a contributing factor of its affirmation, "The long delay in asserting these facts is not reasonable excused." The record in that court did show that petitioner presented the reasons for the delays and among those was the act of the Superior Court Clerk HENSEN in his failure to provide transcripts as ordered by the Court. (See Opinion of the District Court of Appeal, 4/Crim. 2153, page 3, lines 4 to 5; Appellant's Opening Brief, pages 3 and 4; Clerk's Transcript on Appeal, pages 230 to 232.)

On June 20, 1966, the United States Supreme Court denied petitioner's petition for writ of certiorari in the matter of ROBERT NEWTON GARDNER, JR., v. CALIFORNIA, No. 1636 Misc., Oct. Term, 1965, 384 U.S. ——. Mr. Justice Douglas was of the opinion that the petition for writ of certiorari should be granted and the judgment below vacated.

III

Petitioner incorporates page 3, line 16, to page 7, line 19, inclusive, of the Supplement herein by reference thereto as fully set forth in this portion of the Statement of Facts herein.

In addition to the above listed denial of meaningful access to the courts and the right to properly prepare and present petitions seeking redress, the petitioner will show upon hearing that the State of California through its prison officials have denied petitioner three (3) separate appeals by wrongful delay of legal mail. That he has been denied adequate access to legal materials, law books, post-conviction review, appellate review, and the right to have a meaningful hearing in any court whatever.

Over the past several years the petitioner has been seeking redress in various courts with respect to his judgment of conviction. He has accumulated a large amount of irreplaceable notes, records, documents, transcripts, exhibits, and the like. The petitioner is informed and believes, and therefore states, that he now has sufficient evidence to show wilful and knowing use of perjury by the prosecution, among numberous other constitutional violation, during trial and post-conviction proceedings held *in absentia*. The aforesaid acts were committed by the arresting officers, prior to, during, and after judgment. The arresting officer in charge was William Madden, when Captain of Los Angeles City Police, now member of the Adult Authority, Department of Correction. (See Exhibits, Group III, No. 5, 6, 7.)

Petitioner will show upon hearing that on November 4, 1963, he presented a petition for writ of habeas corpus, number 4319, Solano County Superior Court, wherein he did show that upon preparation for judicial review of his case, and after the appointment of William Madden, arresting officer in charge, to the Department of Correction, that petitioner was subjected to "Special Regulations and Restrictions" resulting in a "merry-go-round" with respect to all legal mail and material. In one instance a letter to an agency of the United States Government, which had important information directly relating to his case, required 27 days to travel from Vacaville to San

Franscisco, California. Other letters to the Clerk of the United States Supreme Court, Superintendent of Documents, and to counsel, have required up to 67 days before delivery. (Habeas Corpus No. 4319 with Exhibits will be presented to this court upon hearing.)

During the first part of August, 1966, while at the Medical Facility at Vacaville, California, petitioner had two partially prepared petitions for writ of habeas corpus with exhibits and related notes. One of those petitions was directed to the Solano County Superior Court attacking the wilful and knowing use of perjured testimony by the prosecution. Immediately prior to the preparation of those petitions, the petitioner was denied a previous institution initiated request for transfer by the Director of Corrections, and confirmed by the Full Classification Committee at the Medical Facility. That action assured petitioner that he would not be transferred, under normal policy, for at least six months. Petitioner was therefore assured that he had six months to prepare and present his petitions without transfer and loss of jurisdiction problems. (See Exh. Grp. I, No. 9, 10, 11, 13)

On August 18, 1966, Judge Leon Yankwich, U.S. District Court, Central District of California, granted the petitioner leave to prosecute a Civil Rights Complaint, 42 U.S.C. 1983 and 1985, involving the District Attorney Kenneth Williams and County Clerk William St. John, and their deputies, of Orange County. The Petitioner is informed and believes, and therefore states that upon the District Attorney, Kenneth Williams, et al, being served with Federal Summons in the above matter, the District Attorney communicated with the Director of Correction, Walter Dunbar, and an immediate transfer situation was initiated under color of institutional convenience. That transfer was set up for the "Special Treatment" to be afforded the prisoner and his legal material. (See Exhibits, Grp. I, No. 9, 10, 11, 12, 13, 23, and 25.)

On August 29, 1966, the petitioner was transferred to the California Mens Colony-East, Los Padres, California, without sufficient notice or time to prepare, pack, and to send home any surplussage. (See Exhibits, Grp. I, No. 10, pp. 3-5; 12, 23, 25.)

Upon arrival at the California Mens Colony and for five weeks thereafter, petitioner was denied all legal material, notes, records, and even blank legal paper. This was while petitioner was and presently is actively in Federal Court prosecuting a civil rights complaint for damages. During that five week period, all of petitioners, legal material and most of his personal property was subjected to systematic pilferage, destruction, and/or confiscation of the most important legal materials, notes, records, exhibits, original documents, irreplaceable instruments, books, formats, and the like, all relating to past, present, and future court actions. (See Exhibits Grp. I, No. 10, pp. 1 to 5.)

On October 4, 1966, limited property of an expendable nature, such as, blank legal paper, copies of very old notes, petitions, and letters, was afforded the petitioner. That property or at least most of that property would have been separated prior to transfer and sent home as surplussage, providing, the petitioner would have had sufficient time to pack and prepare prior to his transfer. (See Exhibits, Grp. I, No. 10, 11, 13, 25, & In re 5101.)

The material, all of legal nature, now remaining in the custody and control of the respondents has taken the petitioner years to accumulate, due to being indigent, and that material is extremely important and necessary to afford petitioner his rights to a meaningful preparation, presentation, and access to the courts. It must be remembered that all the material is lawfully and rightfully the petitioner's, either personally typed copies of court records, legal notes, photographic copies of court records, transcripts, copies of records afforded by attorneys and courts, and irreplaceable original exhibits, documents, and depositions. Moreover, all law books, rules of court, rules of procedure, and the like, not available in the State Library or institution library, have been confiscated or destroyed. All of the aforesaid property was duly authorized by the sending Superintendent and recognized as such by the sending Receiving and Release Sergeant, with records and property slips showing authorization and the date of petitioner's purchase or proper receipt thereof. (The statements made in part III will be substantiated

upon hearing. Witnesses, exhibits, letters, and reference to records will be available. Reference to witnesses by name will not be made at this time as it may result in threats, intimidation, transfer, and the like. Reference to records, documents, exhibits, and the like will be made— the location thereof, will not be made at this time as the Respondents, and other prison officials, in the past have confiscated and/or destroyed legal exhibits, transcripts, and other property legal in nature, as a result of allowing them access thereto. (See Exhibits, Group II, No. 4, 5, 6, and No. 1, 2, and 3; Group I, No. 25, 27, and 10; Group III, No. 5, No. 6 pp. 29, 30, and 31; and Petition for Injunctive Relief, Case No. 5101, presently pending before this Court.)

For over 52 months the petitioner was denied any communication whatever with the counsel of his choice, a Mr. Marshall Krause of San Francisco, California. (See Exhibits, Group I, Numbers 1, 2, 3, 4, 5, 6, 7, 8, and 9.)

For over 80 months it has been and is now the policy of the prison officials to deny privileged communication with any court or counsel whatever. (See Exhibits, Group I, No. 27 and 28; Group II, Numbers 1, 2, and 3; Group III, No. 6 pp. 29, 30, 31; and Group III, No. 5.)

For over 80 months the petitioner has been severely restricted and at times totally denied the right to communicate with counsel, the courts, United States Attorney, U.S. Civil Rights Department, The Presidential Committee on Civil Rights, and numerous other avenues of correspondence. When access to the courts or counsel is allowed, it is delayed to such a degree that petitioner has been irreparably damaged as to his cause, such as being foreclosed as to three (3) appeals, due to excessive delays. Each act is an intentional act to deprive petitioner of access to courts and meaningful means to prepare and present petitions seeking redress. (See Exhibits, Group II, No. 1, 2, 3, 4; Group IV, Exh. G and A, pp. 1 to 5; Group III, No. 5, and No. 6, pp. 29 to 31.)

As hereinabove shown, the petitioner has been denied for more than 52 months meaningful access to counsel, courts, and to legal reference and procedural material, and legal court records. Upon finally obtaining necessary

law books, transcripts, exhibits, formats, accumulated notes, and other important legal material, the petitioner was subjected to respondent's "Special Treatment" afforded to "Writ Writers" and transferred to another institution where all his property was confiscated for 5 weeks, during which time a Mr. R. R. Lucas, Classification and Parole Representative acting for respondent, systematically stripped, pilfered, destroyed, or otherwise denied him the important transcripts, exhibits, notes, reference and procedural material, and all law books, rules of court, formats, and other necessary material not available in the institution or state libraries, or at least, the above material has never been available to petitioner in the past. Recent directives from the Director of Corrections show that the aforesaid actions of respondents will continue to be his policy. Now after more than 80 months of attempting review of his case, the petitioner has been, is now, and will be continuously foreclosed all possibility of ever obtaining an adequate and meaningful post-conviction review of his case. The aforesaid was, is, and will be due to the wilful acts and omissions of the respondent and other subordinate prison officials in their knowing and intentional abridgment of petitioner's State and Federal Constitutional Rights. (See Exhibits, Group I, No. 10; Group II, Numbers 7, 8, and 9 to 34, inclusive.)

In all medium and maximum security prisons in this state, the legal section of the library has had the United States Codes, Rules of the Federal District Court, Federal Criminal Procedure, Federal Civil Procedure, and the like. This has been so due to the fact that the aforesaid legal books are not available to a prisoner by order from the State Law Library in Sacramento.

It is a well established fact that the petitioner has a federal constitutional right to petition the federal courts for a writ of habeas corpus, to appeal from any denial therefrom, to seek a petition for writ of certiorari in the United States Supreme Court, and to invoke provisions of the Civil Rights Acts of both Title 18 and 42 of the United States Code. The removal and destruction of, and total denial of access to, the United States Codes, Rules, and Civil and Criminal Procedure, denies petitioner a ade-

quate and meaningful preparation and presentation of federal remedies that are guaranteed him by the Federal Constitution. The above is true for any state or federal prisoner and incompasses any abridgment upon those rights secured.

On September 19, 1966, a Transmittal Letter, 26, 66, from the Director of Corrections, Walter Dunbar, was issued to all Wardens, with respect to changes in the Department of Corrections Administrative Manual. In that Transmittal Letter the list of the newly approved law books and codes were set forth. The United States Codes and all other Federal Rules and the like as listed in the above paragraphs were excluded. That exclusion was spelled out in paragraph 330.04. Also in that letter, the order is given that, ". . . All existing law books and reference material in inmate law libraries not consistent with this section *are to be removed and destroyed* . . ." "Par. 330.045 *is added to preclude personally owned law books and to generally exclude personally owned copies of opinions and decisions.*" Further reference is made excluding any and all reference material, legal publication, California and Federal legal newspapers, and the like. The only legal material authorized by the new changes in the Administrative Manual, is as set forth in Par. 330.045, "inmates may receive or purchase a single copy of an opinion or decision in their own case (Commonly known as slip-opinion) and retain it in their own possession. (See Exhibits, Group II, No. 16.)

The State Library will not loan the United States Codes, Federal Criminal and Civil Procedure, or Rules of the Federal District Court. The above Administrative Order forecloses the petitioner's right to have any meaningful access whatever to those basic codes and rules. Moreover, for a prisoner who has never had a decision in his case, he is forever foreclosed and denied all legal notes, reference material, slip-opinions, U.S. basic codes and rules, and the like as heretofore listed.

Considering the strict enforcement and expanded scope afforded all of the Director's Rules restricting legal work by the officials of this institution, even all hand-written or typed notes on opinions, decisions, and case law rele-

vant and important to a man's cause will be confiscated and/or destroyed as contraband as the petitioner's legal material and property has been done at this institution since his arrival.

It is interesting to note and it seems rather coincidental that the above Transmittal Letter was sent down by the Director shortly after the heated statements were made to newspapers and over radio with respect to cruel and unusual punishment within the California Prison system by Federal District Judge Harris and the reply thereto by the Director of Correction regarding the *Jordon* vs. *Fitzharris* decision (August 1966); and, in regard to the Petitioner's case, during this same period, the communication between the District Attorney of Orange County and Director, Walter Dunbar, with respect to the civil rights suit for damages. (Verification of any statement above presented is available to the Court upon the denial of that statement by the respondents.)

IV.

Petitioner incorporates page 3, line 16, to page 12, line 27, of the Supplement herein by reference thereto as fully set forth in this portion of the Statement of Facts.

Petitioner states, upon review of the above Statement of Facts, that it is clear that he has been subjected to long delays and forced into prolonged litigation, which has foreclosed many constitutional issues due to the retroactivity question having been resolved adversely to petitioner's cause. Search and Seizure was a main issue in the coram nobis proceeding. The arrest and trial of petitioner was subsequent to Miss Mapp's in *Mapp* vs. *Ohio*. Petitioner's motion for records and the granting of that motion was prior to the decision in *Mapp*. Petitioner was severely prejudiced by the delay as previously set forth as he would have been able to present the issue in his case prior to the *Mapp* decision, providing, he would have been afforded his constitutional rights as to transcript when ordered by the court.

Upon review of the coram nobis proceedings, the main issue and reason for the affirmation of the lower court's denial of that coram nobis was the delay as to the appli-

cation, and the delay in presenting the Search and Seizure issue as *Linkletter* v. *Walker* was decided a few days prior to the decision of the District Court of Appeal. Retroactivity would not be a question if the petitioner would have been able to timely present his petition, and even so, the Ninth Circuit prior to *Linkletter* held the *Mapp* opinion retroactive. It is clear that petitioner would have been discharged from custody had he been afforded his constitutional rights and not been delayed, harrassed, oppressed, and denied meaningful access to the courts by acts of prison officials and the County Clerk.

The record will show that petitioner has been forced into prolonged litigation, which has prejudiced his chances of parole. Especially so, when petitioner was forced to attack the arresting officers to show the illegality of petitioner's trial, and when the arresting officer in charge now exercises a high seat of power within the Department of Corrections as an Adult Authority member. Moreover, it is common knowledge that prisoners seeking redress in the courts, while as an indigent and in propria persona, will incur the wrath of the prison officials and the Adult Authority, and especially so, under the special circumstances of this case. A prisoner, under the circumstances as set forth in this case, will do an execessive term of imprisonment solely as punishment for exercising or attempting to exercise his federal civil and constitutional rights.

The petitioner is 43 years old. He was sentenced to a term of 6 months to 10 years for narcotic possession without prior narcotic convictions and as a second termer overall. He was eligible for parole in 1960 and discharge in 1962 under his present legal status. He has an above average work and disciplinary record. He was recommended for parole in 1962 by the Staff Psychiatrist of the California Medical Facility. He has been recommended for minimal time by other high officials more familiar with his case then the present prison officials. It must be remembered that petitioner has shown that he has attempted to present petitions showing perjury by the arresting officers. The arresting officer in charge is William Madden, presently a member of the Adult Authority and

in a seat of power wherein he is able to demand that his statements as presented during and subsequent to the arrest of petitioner be accepted as true. Every act of the petitioner and every stage of his preparation for redress is available to Mr. Madden. Many documents, which would show perjury and other criminal acts committed by arresting officers have now been wrongfully confiscated or destroyed.

Moreover, the petitioner has now served 80 months in prison for his offense. The average term for possession of narcotics without prior narcotics conviction and as a second termer is less than 50 months, and that average does not include cases with recommendations for early release. It is clear that the petitioner, under the special circumstances of this case, has been caused to serve an excessive term of imprisonment solely because petitioner has exercised or attempted to exercise his federal civil and constitutional rights. (The aforesaid may be substantiated by the records of the respondents, other agencies, and testimony by individuals concerned. In addition, petitioner has records and depositions outside of this institution, now unavailable to petitioner, but will be presented upon hearing.)

V

Petitioner incorporates page 8, line 16, to page 15, line 8, inclusive, of the Supplement herein by reference thereto as fully set forth in this portion of the Statement of Facts herein.

It is clear that coercion, cruel and unusual punishment, and the like, can be inflicted upon a person without resorting to the physical tortures, but by the use of psychological means, such as frustrations, threats, oppression, coercion, and continuous denial of known constitutional rights.

Petitioner asserts that upon review of the above and the overall record and aspects of his case, that an obvious cruel and unusual punishment situation will be shown. Petitioner has been subjected to cruel and unusual punishment in violation of the Eight Amendment, and has been denied due process, equal protection, privileges, and im-

munities, in violation of the Fourteenth Amendment, and as a result thereof he has been deprived of substantive rights under the laws and Constitutions of the State of California and the United States of America, and as such, he is entitled to discharge from custody upon petition for writ of habeas corpus.

Respectfully submitted,

/s/ Robert Newton Gardner, Jr.
ROBERT NEWTON GARDNER, JR.
Petitioner in propria persona

DATED, 30 October 1966
Los Padres, California

VERIFICATION

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN LUIS OBISPO)

I, ROBERT NEWTON GARDNER, JR., the undersigned, say:

I am the petitioner in this action; the above entitled document, a petition for writ of habeas corpus and the annexed Supplement, pages 1 to 18, is true of my own knowledge, except as to matters that are stated in it on my information and belief, and as to those matters, I believe to be true.

EXECUTED on the 30th of October, 1966, at Los Padres, California.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Robert Newton Gardner, Jr.
ROBERT NEWTON GARDNER, JR.
Affiant and petitioner

ROBERT NEWTON GARDNER, JR.
A-28381
California Mens Colony-East
Los Padres, California

Petitioner in prioria persona

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

Habeas Corpus Case No. ——

ROBERT NEWTON GARDNER, JR., PETITIONER

- vs. -

H. V. FIELD, Superintendent, California Mens Colony-East, Los Padres, California, RESPONDENT

BRIEF OF POINTS AND AUTHORITIES

BRIEF OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION

I

Petitioner was deprived of due process and equal protection of the laws as secured by the Fourteenth Amendment by the wilful or negligent failure of the Superior Court Clerk to provided him with a copy of his trial transcript, when ordered to do so by a Court.

"Court stenographer who wilfully or negligently fails to provide an indigent with a copy of his trial transcript, when ordered to do so by a court, deprives indigent of his federally protected rights under color of law." 42 U.S.C.A. 1983

Laurence Thomas Washington vs. *Official Court Reporter*, 251 F. Supp. 945, March 30, 1966, U.S.D.C., E.D. of Penn., 34 B.N.A. Law Week 2546, March 30, 1966.

II

The failure of the State of California through its officials to afford petitioner his transcripts, when ordered to do so by a Court, prejudiced his cause and denied him a timely, proper, and meaningful coram nobis hearing and caused the appeal therefrom to be inadequate and meaningless, which resulted in irreparable damage to his cause, and as such violated petitioner's right to due process and equal protection as secured by the Fourteenth Amendment.

"Equal Protection Clause requires a transcript to be furnished an indigent free of charge, and right to transcript is equally applicable if notes are needed to prepare collateral attack on the conviction." and,

"While refusal to furnish a transcript without a showing of need for it is no deprivation of an indigent's civil rights, inference of need may properly be drawn from issuance of previous court orders compelling the production of transcripts."

Washington v. *Court Reporter*, supra, 251 F. Supp. 945, 946, 34 B.N.A. Law Week 2546, March 30, 1966.

"Petitioner claims he was deprived of his liberty in violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution. He claims that the State of Indiana (California) through it prison officials (and court officials) denied him the equal right afforded to all persons convicted of crime in Indiana (California) to prosecute an appeal . . . (coram nobis petition and appeal therefrom) . . ." and

"The Indiana (California) State Constitution guarantees the right to appeal (coram nobis and appeal therefrom) in all cases reviewed regardless of the chance for a reversal. We hold that when petitioner was denied the right to appeal (coram nobis and appeal) within the statutory period (California's coram nobis is limited as to time), he was deprived of a substantial right . . ." (Parenthesis added)

U.S. ex rel. Cook vs. *Dowd*, 340 U.S. 206, 7th Cir. (1950)

"The probability of petitioner's prosecuting a successful appeal (coram nobis and appeal therefrom) is not a proper consideration in determining whether a writ of habeas corpus should issue and whether a discharge should be granted." (parenthesis added)

U. S. ex rel. Cook v. *Dowd*, 340 U.S. 206 (1950)

III

The acts and omissions of the State of California through its prison officials have deprived petitioner of the right to counsel, access to the courts, meaningful post-conviction review, appellate review, and have subjected petitioner to arbitrary confiscation, destruction or denial of legal documents, exhibits, notes, court records, law books, reference material, and several partially prepared petitions for writs of habeas corpus with exhibits, and incoming and outgoing legal letters. Moreover the petitioner has been denied a meaningful and timely access to the United States Mail. As a result of the aforesaid, the petitioner has had his constitutional rights either denied or abridged in direct contravention to the First, Fifth, Sixth, Eight, and Fourteenth Amendments to the United States Constitution.

"A convicted felon, although civilly dead (See penal code 2600, 2604) is never-the-less a 'person' entitled to due process of law and protection of the Fourteenth Amendment."

In re Riddle, 22 Cal. Reptr. 472
Ex Parte Hull, 312 U.S. 546
Dowd vs. *Cook*, 340 U.S. 206
McCollum vs. *Mayfield*, 130 Fed. Supp. 112

"Access to the courts is as effectively denied by the preventing the preparation of legal documents as it is by preventing their filing."

Cochran vs. *Kansas*, 316 U.S. 255
Ex Parte Hull, 312 U.S. 546
Bailleaux vs. *Holmes*, 177 F. Supp. 361 (1959)

In re Robinson, 112 Cal. App. 2d 728

"When a right is conferred by law, everything necessary for its protection is also conferred."

People vs. *McGorvey*, 61 C.A. 2d 562 at 577.

"A prisoner duly convicted and incarcerated in a state penitentiary does not thereby suffer the loss of his civil rights, and such a prisoner may invoke provisions of the Civil Rights Act."

Redding vs. *Pate*, 220 F. Supp. 124
Ortega vs. *Ragen*, 216 F.2d 561 (Cert. Denied) 349 US 940

"Laymen cannot be expected to know how to protect their rights when dealing with practiced and carefully counseled adversaries, . . ."

Gideon vs. *Wainwright*, 372 U.S. 355

"The Court is satisfied that adequate access to legal materials can only be achieved through the termination of regulation which distinguishes between the acquisition of legal material and other printed matter."

Bailleaux vs. *Holmes*, 177 F. Supp. 361 (1959)

"The right here sought to be protected is not a property right; it is the right to be heard by the courts. Prison officials may not enforce rules which suppress papers directed to the courts."

Dowd vs. *U.S. ex rel. Cook*, 340 U.S. 206
Ex Parte Hull, 312 U.S. 546

". . . A person is unlawfully restrained of his liberty so as to be entitled to the writ of habeas corpus when, even in custody, he is deprived of some right to which, even in his confinement, he is lawfully entitled under the Constitution or laws, the deprivation thereof served to make his imprisonment more onerous than the law allows, or curtails, to a greater extent than the law permits even in his confinement, his freedom to go when and where he likes."

In re George Robinson, 112 Cal. App. 2d 728

"The situation in the case at bar is unusual in that the petitioner is not claiming he was deprived of any constitutional right during trial or up to an including the judgment of conviction. We think, however, that he correctly claimed his detention became illegal by reason of events subsequent to his conviction."

Graham v. *Squier*, 132 F. 2d 681, 683, (9th Circuit)
Cochran v. *Kansas*, 316 U.S. 255, 62 S. St. 1086

IV

Petitioner has been forced into prolonged litigation, which has severely prejudiced his chances of parole with the Adult Authority and caused him to serve an excessive term of imprisonment as punishment solely because petitioner exercised or attempted to exercise his Federal Civil and Constitutional Rights, and as such is in contravention to the due process and equal protection clauses as secured to all citizens by the Fourteenth Amendment to the United States Constitution.

It is a well known and recognized fact that the California Adult Authority does so punish prisoners who dare to litigate their cases. It is a matter of court record that the respondents habitually make a practice of illegally frustrating, hampering and interfering with petitions and other legal actions filed by prisoners in propria persona. For example see:

In re Robinson, 112 Cal. App. 2d 626
In re Chessman, 44 Cal. 2d 23
In re Rider, 50 Cal. App. 797
In re Malone, 112 Cal. App. 2d 631
In re Byrnes, 26 Cal. 2d 824
In re Riddle, 22 Cal. Reptr. 472
People vs. *Slobodion*, 30 Cal. 2d 362
People vs. *Coyle*, 88 Cal. App. 2d 975
People vs. *Stinchcomb*, 92 Cal. App. 2d 741
People vs. *Stinchcomb*, 102 Cal. App. 2d 626
Ex parte Hull, 312 U.S. 546
McCollum vs. *Mayfield*, 130 Fed. Supp. 112
Cochran vs. *Kansas*, 316 U.S. 255

Bailleaux vs. *Holmes*, 177 F. Supp. 861
Gordon vs. *Farrson*, 77 F. Supp. 477
Harper vs. *Wall*, 85 F. Supp. 783
Dowd vs. *Cook*, 340 U.S. 206
United States vs. *Jones*, 207 F. 2d 785

Each prisoner is made to understand that if he persists in attempting to appeal or otherwise litigate his case he can expect to be punished by the Adult Authority by years being added to his sentence and be subjected to relentless persecution and discrimination from the prison officials while serving his sentence.

In each of the above cited cases the court mindful of the equal protection clause of the Fourteenth Amendment held that such interference and arbitrary actions were illegal, however, despite the above decisions, the prison officials and the Adult Authority continue their illegal policy of delaying, hampering, and interfering with the efforts of prisoners seeking to obtain a review of their case by the courts. The prison officials and the Adult Authority have continued their wrongful policy with an expanded scope and increased zeal to oppress, intimidate, and punish any prisoner who dares to enforce or attempts to enforce his Federal Civil and Constitutional Rights. Each official's wrongful act is an intentional and wilful act with each official well aware that his action violates federal criminal statutes, Title 18 U.S.C. sections 241 and 242, and specifically proscribed in Title 42 U.S.C., sections 1983 and 1985.

The rights guaranteed to the petitioner under the State and Federal Constitutions are important to all and any abridgment or impairment of those rights must be carefully scrutinized and complete vindication assured for violations of those fundamental rights as true liberty consists in the privilege of enjoying our own rights, not in the destruction of the rights of others.

V

The overall results of aforesaid deprivations and events set forth in parts I, II, III, and IV, have caused the petitioner to be subjected to cruel and unusual punishment

and have denied him due process and equal protection, privileges, and immunities, in violation of the Eight and Fourteenth Amendments,

The Supreme Court of the United States has repeatedly declared that cruel and unusual punishment, coercion, and the like, may be inflicted upon a person by psychological methods without resorting to the physical tortures.

It is the contention of the petitioner that he has been subjected to cruel and unusual punishment through psychological means, such as, prolonged threats, oppression, coercion, frustration, and a continuous denial of known constitutional rights by means of an unlawful abuse or use of power in violation of the petitioner's human rights.

The United States Supreme Court held in *Robinson* v. *California*, 370 U.S. 660, that cruel and unusual punishment in violation of the Eight Amendment is now enforceable against the States.

Petitioner asserts that upon full evidentiary hearing, wherein he will be assured of the right to subpoena of witnesses and records and afforded a full review of the overall aspects and constitutional deprivations in his case, that an obvious cruel and unusual punishment situation will be shown. Moreover, that petitioner has been deprived of numerous fundamental rights secured under the First, Fifth, Sixth, Eight, and Fourteenth Amendments and with each deprivation subsequent to his judgment of conviction.

This Court has jurisdiction to discharge the petitioner from custody "when the imprisonment was at first lawful, yet by some act, omission, or event which has taken place afterwards, the party has become entitled to a discharge." (California Penal Code, Section 1485 (2).

WHEREFORE, petitioner prays that he be afforded a full evidentiary hearing in the matter presently before the Court and upon adjudication of the issues that petitioner be discharged from custody.

Respectfully submitted,

/s/ Robert Newton Gardner, Jr.
ROBERT NEWTON GARDNER, JR.
Petitioner in propria persona

AFFIDAVIT OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN LUIS OBISPO)

ROBERT NEWTON GARDNER, JR., the petitioner, being under penalty of perjury, states that on the date set forth below he caused to be mailed or served in person a true and correct copy of the present petition for writ of habeas corpus consisting of Twenty Six (26) pages, plus four (4) pages of Index of Exhibits, each annexed hereto and made a part hereof, to the following persons:

James W. Powell
District Attorney
Court House Annex
San Luis Obispo, Cal.

Office of Attorney General
600 State Building
Civic Center
Los Angeles, California

H. V. Field (Respondent)
California Mens Colony
East Facility
Los Padres, California

Mr. A. E. Mallagh
County Clerk
Superior Court (Annex)
Los Padres, California

/s/ Robert Newton Gardner, Jr.
ROBERT NEWTON GARDNER, JR.

I, the undersigned, say:

I am the petitioner in this action; the above document is true of my own knowledge, except as to matters that are stated in it on my information and belief, and as to those matters I believe it to be true.

EXECUTED on October 30, 1966, at Los Padres, California. I declare under penalty of perjury that the foregoing is true and correct.

Sincerely,

/s/ Robert Newton Gardner, Jr.
ROBERT NEWTON GARDNER, JR.
Affiant and petitioner

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

Case No. ———

In the Matter of the Application of
ROBERT NEWTON GARDNER, JR.
For a Writ of Habeas Corpus

NUMERICAL INDEX TO FOUR GROUPS OF EXHIBITS

GROUP I

No. 1 Letter from Keating, June 3, 1964, denying communication to ACLU Attorney, Marshall Krause, San Francisco, Calif.

No. 2 Letter from Krause, ACLU, to Keating, August 12, 1964.

No. 3 Letter from Krause, ACLU, to Gardner, August 12, 1964.

No. 4 Letter from Keating to Krause, ACLU, August 14, 1964.

No. 5 Letter to Collins, ACLU, August 16, 1964, from Gardner.

No. 6 Letter to Krause, ACLU, August 16, 1964, from Gardner.

No. 7 Letter to Krause, ACLU, August 18, 1964, from Keating.

No. 8 Letter to Krause, ACLU, December 2, 1964, from Gardner.

No. 9 Letter to Krause, ACLU, February 16, 1965, from Gardner.

No. 10 Letter to Gov. Edmund Brown w/copies, Oct. 9, 1966,".

No. 11 Letter to H.V. Field, Supt., Oct. 2, 1966, from Gardner.

No. 12 Letter from Gardner to Supt. CMF re property denied.

No. 13 Letter to Krause, ACLU, as to confiscation of property, dated September 18, 1966.

No. 14 Letter to S.L.O. Co. Super. Ct. as to Mandamus re fee.

No. 15 Letter to trial court as to records denied with reply, dated April 16, 1964.

No. 16 Letter from Pub. Def. showing *Linkletter* effect due to delay. 6-23-65.

No. 17 Letter to Orman, Dep. Pub. Def., 12-15-64, requesting investigation and presentation of claims of perjury during in absentia hearing on coram nobis.

No. 18 Letter from Orman, 12-15-64 as to no such address as given for so-called informer.

No. 19 Letter to court as to Motion to Vacate, May 13, 1964.

No. 20 Letter to USDC as to denial of Fed. Writ Forms, 10-13-66.

No. 21 Letter to US Marshal USDC CD Cal. as to 3rd letter re service of defendants in Civil Rights Suit, 10-13-66.

No. 22 Letter to USDC as to severeal letters sent but not mailed or not answered re Civil Rights Case, 10-1-66.

No. 23 Letter to USDC, Judge Leon Yankwich, as to confiscation of all legal material, during proceedings of 66-1334-Y.

No. 24 Letter to S.L.O. Super. Ct. re Mandamus 5101, 9-29-66.

No. 25 Letter to R.R. Lucas, September 17, 1966, re information as to justification for confication of all legal material.

No. 26 Letter from Court Clerk dated March 25, 1965, showing a Motion to Vacate, filed December, 1964, had been lost.

No. 27 Letter from County Clerk dated August 4, 1964, showing that two pages of documents mailed to petitioner had been removed. Records Officer of Prison later refused to return and admitted possession thereof.

No. 28 Letter to Krause, ACLU, June 13, 1966, as to continuous denial of privlleged communication with counsel.

No. 29 Letter from ACLU San Francisco Office to N.Y. Office as to their stand on petitioners letter of 28. The answer was denied petitioner and returned to sender. June 15, 66.

GROUP II OF EXHIBITS

No. 1 Letter of April 1, 1964, to trial court re records, etc. with note of Lt. Boling denying petitioner right to mail.

No. 2 Letter of April 1, 1964, to Chief Postal Inspector, Washington, D.C., with complaint as to legal mail, both incoming and outgoing, being denied by prison officials.

No. 3 Letter to U.S. Attorney General's Office S.D. of Calif., April 1, 1964, complaining as to denial of legal mail and misuse of veteran's disability funds. Letter denied mailing by La March Lieutenant Boling, G.M.F., Vacaville.

No. 4 Letter of inquiry as to 5 pounds of legal documents, notes, transcripts and books as to case mailed to co-defendant in Colorado. Postage for certified, registered w return receipt requested, was paid by petitioner. Mail Officer in Colorado answered that no such package ever received. Petitioner denied further inquiry.

No. 5 Letter from C. Hull, Prison Records Officer, showing the letters of inquiry were denied, however, Hull claimed the package of legal documents were mailed, Feb. 8, 1965.

No. 6 Request for correspondence with co-defendant re case was denied by Lt. Oliver. March 4, 1965.

No. 7 Request to purchase subscription to Law Review, denied.

No. 8 Request to purchase U.S. Supreme Court Slip Opinions, denied. September 24, 1963.

No. 9 Letter to US Supreme Court re photographic copies of the original certiorari in Griffin vs. California, June 4, 65.

No. 10 Letter from State Supreme Court answering inquiry as to purchase of original habeas corpus of Monroe Hall. 6-23-65.

No. 11 Letter sending check for Monroe Hall petition. 6-28-65.

No. 12 Letter from USDC advising receipt of check in purchase of portions of transcript in US vs. Cooney, Colo., 6-26-64.

GROUP II OF EXHIBITS (Continued)

No. 13 Letter from State Procurement Office showing purchase of 3-ring binders and rules of court. Feb. 26, 1965.

No. 14 Letter of March 12, 1964, from CMF Business Manager showing policy of a 100% penalty for purchasing legal items.

No. 15 Letter of March 21, 1964 after ACLU intervention, to US superintendent of Documents as to purchase of Slip Opinions showing in excess of 50 day delay in mailing by Lt. Oliver.

No. 16 Copy of Dunbar's TRANSMITTAL LETTER as to confiscation and destruction of law books, and the like. Sept. 19, 1966.

No. 17 Letter to USDC, Penn., July 20, 1966, w/check for photocopy of original complaint in Washington v. Ct. Reporter.

No. 18 Letter of USDC, Penn., showing mailing of document in 17.

No. 19 Receipt of document listed in No. 17 and 18.

No. 20 Receipt of purchase of Cal. 2d, Volumes 61, 62 and 63.

No. 21 Receipt for portions of transcript in U.S. v. Cooney.

No. 22 Receipt for institution purchase of ditto-master (CMF).

No. 23 Receipt for subscription payment to B.N.A. Law Week.

No. 24 Receipt for Cal. 2d purchases.

No. 25 Receipt for photographic copies of Munro v. Younger.

No. 26 Letter showing subscription to Preliminary Prints of US Supreme Court, Oct. Terms 1964 and 1965, March 26, 1966.

No. 27 Letter to Clerk Wilson, U.S. 9th Circuit Court of Appeals, showing authorization for having full transcript of the Robichaud vs. Ronan case: February 28, 1966.

No. 28 Letter showing check mailed for purchase of copy of the original complaint in Munro v. Younger, USDC SD of Cal.

No. 29 Letter showing delay in delivery of No. 28, May 10, 1966.

No. 30 Letter of original request in No. 28, March 2, 1966.
No. 31 Letter to US Supreme Court w/check for copy of original complaint in Renaldi v. Yeager, July 20, 1966.
No. 32 Letter to US Supreme Court w/check for Griffin copies and Linkletter, slip-opinions, etc. June 24, 1965.
No. 33 Letter ordering B.N.A. text of Briefing and Arguing Federal Appeals, by B. Wiener, July 17, 1966.
No. 34 Denial of purchase request for Harv. Law Rev. and Softbound booklet on rules of US Supreme Court, Oct. 17, 1963.

GROUP III OF EXHIBITS

No. 1 Order of July 22, 1960, GRANTING transcripts in C-10451, Superior Court, County of Orange, California.
No. 2 Order of July 2, 1963, DENYING transcripts in C-10451, Superior Court, County of Orange, California.
No. 3 REGISTER OF ACTIONS, C-10451, Superior Court, Orange Co.
No. 4 Civil Rights Suit for damages against Orange County Clerk, USDC SD of Cal., case No. 66-1334-Y, pending.
No. 5 Copy of Habeas Corpus No. 4319, Solano County, as to denial of constitutional rights by officials of prison, etc., w/Order denying writ, November 8, 1963.
No. 6 Civil Rights Suit, Gardner v. Madden, 64-1774-JWC USDC SD Cal. with US 9th Circuit Court of Appeals Order Remanding.
No. 7 Slip Opinion, No. 19,971, as to No. 6, Gardner v. Madden, U.S. 9th Circuit Court of Appeals, Remanding to USDC.

GROUP IV OF EXHIBITS

Exhibit "A" Opening Brief, District Court of Appeal, 4/Crim 2153.
Exhibit "B" Respondent's Brief in D.C.A. 4/Crim. 2153.

Exhibit "C" Appellant's Reply Brief in D.C.A. 4/Crim. 2153.
Exhibit "D" Oral arguments in DCA 4/Crim. 2153, Oct. 14, 1965.
Exhibit "E" Opinion of D.C.A. and Order affirming.
Exhibit "F" Petition for Rehearing and Order of DCA Denying.
Exhibit "G" Motion for Continuance, State Supreme Court, 4/cr. 2153.
Exhibit "H" Letters as to continuance, State Supreme Court".
Exhibit "I" Petition for Hearing, State Supreme Court, 4/Crim 2153.
Exhibit "J" Order extending time to file petition for writ of Certiorari to and including May 10, 1966. Order issued by Justice William O. Douglas.
Certification

NOTE AS TO EXHIBITS

The petitioner states that the above listed exhibits are less than half of what he originally had in his possession. All his records related to instant petition, such as letters and receipts, and the like, between the years 1960 and 1963, inclusive, with a a very limited exception, have been confiscated, destroyed, or otherwise denied petitioner by prison officials.

Due to the above situation, petitioner respectfully requests leave to hand carry the above exhibits to the Court and not be required to process them through the prison officials. Moreover, due to the fact that many of the exhibits are original and not replaceable to petitioner, it is requested that continguent to summary denial or upon denial after hearing that petitioner be returned his Four Groups of Exhibits.

Respectfully submitted,

/s/ Robert Newton Gardner, Jr.
ROBERT NEWTON GARDNER, JR.
Petitioner in propria persona

[SEAL]

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IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

No. 5101

Endorsed, Filed, Dec. 6, 1966, A. E. Mallagh, County Clerk, By [Illegible], Deputy Clerk.

In the Matter of the Application of
ROBERT NEWTON GARDNER, JR.
For a Writ of Habeas Corpus

ORDER TO SHOW CAUSE RE PETITION FOR WRIT OF HABEAS CORPUS AND ORDER FOR PRODUCTION OF PRISONER

TO: H. V. Field, Superintendent, California Men's Colony, Los Padres, California.

YOU ARE HEREBY ORDERED TO APPEAR before the above-entitled Court, in Department H thereof, in the Courthouse Annex in the City of San Luis Obispo, California, at the hour of 9:30 A.M. on the 20th day of December, 1966, then and there to show legal cause, if any you have, why the petition of ROBERT NEWTON GARDNER, Jr. for issuance of a Writ of Habeas Corpus should not be granted.

IT IS FURTHER ORDERED that you produce at such hearing all records in your custody or under your control that pertain to said Petitioner's commitment to the Department of Corrections of the State of California and/or the California Men's Colony, Los Padres, California.

IT IS FURTHER ORDERED that you produce said Petitioner on said date at the aforesaid time and place to act as a witness in connection with his application for a Writ of Habeas Corpus.

YOU ARE FURTHER COMMANDED to deliver said Petitioner into the custody of the Bailiff of this Court, Department II thereof, on the 20th day of December 1966, at the hour of 9:30 A.M., and any further proceedings.

Dated this 6th day of December, 1966.

/s/ Timothy I. O'Reilly
Judge of the Superior Court

[SEAL]

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